S233757

IN THE

SUPREME COURT OF CALIFORNIA

BIANKA M.,

Petitioner,

v.

THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,

Respondent;

GLADYS M.,

Real Party in Interest.

AFTER A PUBLISHED DECISION BY THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION THREE
CASE NO. B267454

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF AND PROPOSED BRIEF OF AMICUS CURIAE THE IMMIGRANT LEGAL RESOURCE CENTER IN SUPPORT OF PETITIONER BIANKA M.

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APPLICATION TO FILE AMICUS CURIAE BRIEF

Pursuant to rule 8.520(f) of the California Rules of Court, the Immigrant Legal Resource Center ("ILRC") respectfully submits, as proposed amicus curiae, the enclosed brief in support of Petitioner Bianka M. ("Bianka").[1] The ILRC—founded in 1979 and based in San Francisco, California—is a national non-profit resource center that provides training, technical assistance, and publications on immigration law and policy, including immigrant children's issues such as special immigrant juvenile ("SIJ") status. (See, e.g., A. Junck, et al., Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth (4th ed. 2015); A. Junck, S. Kinoshita & K. Brady, Immigration Benchbook for Juvenile and Family Court Judges (2010); A. Junck, *Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children* (2012) 63 Juvenile & Fam. Ct. J. 48.) The ILRC also regularly provides training and technical assistance on SIJ issues to juvenile courts; social workers; immigration attorneys and pro bono attorneys; probation officers; dependency attorneys; and public defenders in California and throughout the United States.

The enclosed brief seeks to aid the Court's resolution of this case by analyzing the controlling preemption issues implicated by the Court of Appeal's opinion. As Bianka implied in her opening brief on the merits (at p. 29, fn. 7), the Court of Appeal usurped federal authority when it ruled that superior courts could not issue SIJ findings outside of the context of a

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[1] No party or counsel for party in this case authored the proposed brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the proposed brief. No person or entity other than amicus, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of the proposed brief.

"bona fide" child custody proceeding—an unmistakable violation of the principles of federalism that channel state and federal responsibilities throughout the SIJ process. Furthermore, the enclosed brief seeks to assist the Court by demonstrating that the Legislature—by amending Code of Civil Procedure section 155 (California's SIJ statute) after the Court of Appeal issued its opinion—clarified and affirmed the jurisdiction of California superior courts in cases precisely like Bianka's.

For these reasons, amicus curiae the ILRC respectfully requests that the Court accept the enclosed brief for filing and consideration.

DATED: April 5, 2017

Respectfully Submitted,

GIBSON, DUNN & CRUTCHER LLP

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Eric Westlund

Attorneys for Amicus Curiae the Immigrant Legal Resource Center

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I. INTRODUCTION

Congress created the special immigrant juvenile ("SIJ") classification to protect some of the most vulnerable immigrant children in our society. In order to apply for SIJ status with the United States Citizenship and Immigration Services ("USCIS"), a child—like Petitioner Bianka M. ("Bianka") here—must be subject to the jurisdiction of a state juvenile court and obtain three findings (the "SIJ findings" or the "predicate findings") from that court, namely: (1) that the child has been declared dependent upon the court or placed under the custody of an agency or department of a State, or an individual or entity appointed by the court; (2) that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and (3) that it is not in her best interests to return to the country of last habitual residence. (8 U.S.C. § 1101(a)(27)(J).)

In this case, despite evidence that Bianka's alleged father ("Jorge")—who had previously stated that he would prefer that Bianka die rather than provide for her well-being—had received notice of Bianka's maternity action, the superior court refused to issue a custody order or find that reunification was not viable because the court (erroneously[2]) believed Bianka's alleged father was a necessary party to the proceedings. (See *Bianka M. v. Gladys M.* (Super. Ct. L.A. County, 2015, No. BF052072), Minute Order at p. 12 (Aug. 24, 2015).) The superior court also declined to make a best-interest finding despite noting that the evidence "supports a

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[2] Before this Court, Petitioner and appointed amicus have addressed the superior court's error with respect to personal jurisdiction and joinder (Petitioner's Opening Brief on the Merits at pp. 12–13, 33–35; Brief of Amicus Curiae at the Request of the California Supreme Court at pp. 35–41), and amicus will not belabor the point here.

finding" that returning to Honduras would not be in Bianka's best interest. (*Id.* at p. 13.) The result is that Bianka was precluded from applying for SIJ relief despite the superior court's apparent awareness that she meets the eligibility requirements under the federal immigration statute.

The Court of Appeal compounded the superior court's error when it purported to impose a requirement that superior courts may only make SIJ findings "in the context of ongoing, bona fide proceedings related to child welfare, rather than through specially constructed proceedings designed mainly for the purpose of issuing orders containing SIJ findings." (*Bianka M. v. Superior Court* (2016) 199 Cal.Rptr.3d 849, 860 (*Bianka M.*), review granted and opn. superseded *sub nom. M., Bianka v. S.C.* (Cal. 2016) 370 P.3d 1052.) Federal law imposes no such "bona fide" requirement during adjudication of SIJ petitions. Moreover, even if USCIS were required to determine whether petitioners' predicate custody proceedings were "bona fide," the vesting of that responsibility in the federal government would preempt state courts from making similar determinations. Furthermore, much of the Court of Appeal's analysis relies on novel and erroneous interpretations of Code of Civil Procedure section 155 ("section 155"), a fact made even plainer by the Legislature's subsequent clarification of that section immediately following the Court of Appeal's decision.

For these reasons, and for reasons articulated below, amicus urges this Court to vacate the decision of the Court of Appeal and to order the Court of Appeal to remand to the Superior Court with instructions to grant Bianka's custody request and to make the requested SIJ findings.

II. ARGUMENT AND AUTHORITIES

The superior court found that "the requirements of joinder, jurisdiction and proper service of a child's alleged father, all of which [we]re unmet here, preclude[d] the making of a custody order." (*Bianka M.*

v. Gladys M., *supra*, No. BF052072, Minute Order at p. 13 (Aug. 24, 2015).) In affirming, the Court of Appeal improperly upheld the denial of Bianka's requests for custody and SIJ findings, agreeing with the superior court that California law required that Bianka join Jorge as a party to the custody proceedings. Worse, the Court of Appeal attempted to create a general requirement that all custody cases brought by would-be SIJ petitioners in California be "bona fide" in a special manner beyond the normal jurisdictional requirements.

It was never Congress's intent—and it is not the practice of USCIS—to require that the state court proceedings predicate to a SIJ petition be "bona fide" for purposes of SIJS, beyond what is required by state law in any dependency or custody proceeding. Critically, even if USCIS's practice were to review the predicate proceedings to ensure that they were indeed "bona fide," federal immigration law preempts state courts from arrogating to themselves the power to make that determination in the first instance. In addition, the Court of Appeal's decision was contrary to established California law, as clarified by the Legislature's subsequent amendment of section 155. This Court should vacate the contrary opinion of the Court of Appeal.

A. State courts, although critical to the SIJ process, are preempted from assuming a role that—if it exists—is reserved for the federal government

"'[S]tate juvenile courts play an important and indispensable role in the SIJ application process.' [Citation.]" (*Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340, 348 (*Leslie H.*).) Indeed, a young person like Bianka who seeks SIJ relief may not take her first step on the path to lawful permanent residency until she has obtained a custody order and a juvenile court has made three predicate findings pursuant to Title 8 United States Code section 1101(a)(27)(J) ("the SIJ statute"). (See *id.* at p. 349, citing

8 U.S.C. § 1101(a)(27)(J); see also Code Civ. Proc., § 155, subds. (a)(1), (b)(1).) The SIJ statute first requires that the juvenile court find that the youth has been "declared dependent on a juvenile court" or has been "placed under the custody of[] an agency or department of a State, or an individual or entity appointed by a State or juvenile court." (8 U.S.C. § 1101(a)(27)(J)(i).) Second, it requires that the juvenile court find that "reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law." (*Ibid.*).[3] Third, the juvenile court must find "that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence." (*Id.*, § 1101(a)(27)(J)(ii).)

1. The role of state courts in the SIJ process is limited to the usual exercise of their jurisdiction to make child welfare determinations

In placing responsibility in state courts to make the predicate SIJ findings, Congress recognized "the institutional competence of state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests." (*Perez-Olano v. Gonzalez* (C.D.Cal. 2008) 248 F.R.D. 248, 265.) USCIS, the federal agency charged with processing SIJ applications, agrees:

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[3] Congress quite properly directs SIJ petitioners to seek a custody order from a state court since federal courts lack jurisdiction to make such determinations. (*Ankenbrandt v. Richards* (1992) 504 U.S. 689, 703 ["We conclude . . . that the domestic relations exception [to diversity jurisdiction] . . . divests the federal courts of power to issue . . . child custody decrees."]; *id.* at p. 702 ["'[T]he whole subject of the domestic relations of . . . parent and child[] belongs to the laws of the States and not to the laws of the United States.' [Citation.]"].)

> While the standards for making best interests determinations may vary between states, a best interests determination generally involves the deliberation that courts undertake under state law when deciding what types of services, actions, and orders will best serve a child, as well as a deliberation regarding who is best suited to take care of a child.

(USCIS Policy Manual, vol. 6, pt. J, ch. 2, § (D)(3) (Jan. 5, 2017), fn. omitted.) For this reason, "USCIS defers to the juvenile court in making this determination and as such does not require the court to conduct any analysis other than what is required under state law." (*Ibid.*)

While it may be "unusual" for a federal statute to establish a "cooperative relationship between state courts and the federal government" like the one found in the SIJ statute, such a relationship "is not without precedent." (Jud. Council of Cal., Mem. regarding Senate Bill 873 and the Special Immigrant Juvenile Process in the Superior Courts, Sept. 30, 2014, pp. 7–8 & fn. 27 (hereafter Jud. Council Memo).) A "state court must entertain a claim under federal law when its ordinary jurisdiction is appropriate and properly invoked under state law." (*Id.* at p. 8, fn. 27, citing *Printz v. United States* (1997) 521 U.S. 898, 907.) Indeed, after the Court of Appeal's decision, the Legislature amended section 155 to ensure that SIJ petitioners could obtain SIJ findings, clarifying that the superior courts "have jurisdiction to make the factual findings necessary to enable a child to petition the [USCIS] for classification as a special immigrant juvenile."[4] (Code Civ. Proc. § 155, subd. (a)(1).) Nevertheless, the indispensable role of state courts in the SIJ process is not a limitless one.

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[4] See Section B, *infra*, for further discussion on how the updated text of section 155 bears on this case.

2. The federal government has exclusive and preemptive jurisdiction to grant or deny SIJ status

The Supremacy Clause of the U.S. Constitution "'makes federal law paramount and vests Congress with the power to preempt state law.' [Citations.]" (*Quesada v. Herb Thyme Farms, Inc.* (2015) 62 Cal.4th 298, 307–08 (*Herb Thyme*).)[5] Congress may exercise its preemptive authority with "an explicit preemption clause, or courts may imply preemption under the field, conflict, or obstacle preemption doctrines. [Citations.]" (*Id.* at p. 308; *Oneok, Inc. v. Learjet, Inc.* (2015) 575 U.S. ___ [135 S.Ct. 1591, 1595].)[6] Field preemption, in particular, applies "when it is clear that Congress intended, by comprehensive legislation, to occupy the entire field of regulation, leaving no room for the states to supplement federal law.

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[5] As is relevant in this case, federal law may preempt judge-made law as well as statutes. (See, e.g., *Brown v. Mortensen* (2011) 51 Cal.4th 1052, 1060 [considering whether the federal Fair Credit Reporting Act preempted state statutory and common law protection of informational privacy interests]; *Chase v. Blue Cross of Cal.* (1996) 42 Cal.App.4th 1142, 1160 [considering whether the Federal Arbitration Act preempted the covenant of good faith and fair dealing]; *White v. Mayflower Transit, LLC* (9th Cir. 2008) 543 F.3d 581, 586 [holding that the federal Interstate Commerce Act preempted a common-law claim for intentional infliction of emotional distress].)

[6] The burden is on "'the party claiming that Congress intended to preempt state law to prove it.' [Citation.]" (*Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 815.) Where preemption is implied, there exists a presumption against preemption, the strength of which is "heightened in areas where the subject matter has been the longstanding subject of state regulation in the first instance." (*Herb Thyme*, *supra*, 62 Cal.4th at p. 313.) Here, the presumption against preemption is at its nadir given that the federal government "has broad, undoubted power over the subject of immigration and the status of aliens." (*Arizona v. United States* (2012) 567 U.S. ___ [132 S.Ct. 2492, 2498] (*Arizona*); see U.S. Const., art. I, § 8, cl. 4 [authorizing Congress to "establish an uniform Rule of Naturalization"].)

[Citation]." (*Eckler v. Neutrogena Corp.* (2015) 238 Cal.App.4th 433, 447.) In other words, "[f]ield preemption reflects a congressional decision to foreclose any state regulation in the area, ***even if it is parallel to federal standards***. [Citation.]" (*Arizona, supra*, 132 S.Ct. at p. 2502, emphasis added.)

Congress has occupied the field with respect to the adjudication of SIJ petitions, having foreclosed state involvement by making clear that "[a] state court's role in the SIJ process is not to determine worthy candidates for citizenship." (*Leslie H., supra*, 224 Cal.App.4th at p. 351; see 8 U.S.C. § 1101(a)(27)(J)(iii) ["[T]he Secretary of Homeland Security consents to the grant of special immigrant juvenile status."].) Such a foreclosure comes as no surprise since, "'[u]nder the Constitution, the states . . . can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.'" (*DeCanas v. Bica* (1976) 424 U.S. 351, 358, fn. 6, overruled by statute on other grounds, as described in *Arizona, supra*, 132 S.Ct. at p. 2504.) Indeed, the Court of Appeal has recognized that "'the federal government has exclusive jurisdiction with respect to immigration [citations], including the final determination whether an alien child will be granted permanent status as an SIJ [citations].'" (*Eddie E. v. Superior Court* (2015) 234 Cal.App.4th 319, 326 (*Eddie E.*).) That said, Congress has established an important (albeit narrowly drawn) role for state courts in the SIJ process.

3. The Court of Appeal erred in affirming the denial of Bianka's request for a custody order on the grounds that the proceeding was not "bona fide"

A crucial part of the state juvenile court's role in the SIJ process is to place a petitioning youth under the custody of an agency, individual, or court-appointed entity pursuant to state law. (8 U.S.C. § 1101(a)(27)(J)(i);

USCIS Policy Manual, vol. 6, pt. J, ch. 3, § (A)(2) ["There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law."].) California law authorizes a superior court to issue a custody order when California is the child's "home state" (Fam. Code, § 3421, subd. (a)(1)),[7] with "the health, safety, and welfare" of the child being "the court's primary concern in determining the best interest of" the child. (See *id.*, § 3020, subd. (a).) Here, despite the superior court's clear jurisdiction to issue a custody order (arising from the uncontested fact that California is Bianka's home state), the Court of Appeal concluded that "an order containing SIJ findings will not be useful to Bianka unless it is issued in the context of a bona fide custody proceeding." (*Bianka M.*, *supra*, 199 Cal.Rptr.3d at p. 864; *id.* at p. 860 ["Congress and the USCIS rely upon our state courts to issue orders containing the findings required to support an SIJ petition in the context of ongoing, bona fide proceedings relating to child welfare, rather than through specially constructed proceedings designed mainly for the purpose of issuing orders containing SIJ findings."].) This was incorrect.

Congress has never mandated that SIJ petitioners initiate predicate state court proceedings with zero immigration motive. Moreover, USCIS has allowed—through affirmative interpretation and the failure to enact a proposed regulation, respectively—some immigration motive to drive SIJ petitioners to seek predicate orders in state court.

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[7] This is, of course, only so long as "[a] court of another state does not have jurisdiction" (Fam. Code, § 3421, subd. (a)(2)), where California courts "shall treat a foreign country as if it were a state of the United States for the purpose of applying [Section 3421]." (*Id.*, § 3405, subd. (a).) A court "that has made a child custody determination . . . has exclusive continuing jurisdiction." (*Id.*, § 3422, subd. (a).)

The keystone of the Court of Appeal's position to the contrary is a Joint Explanatory Statement of the Committee of Conference, which discusses a modification to the SIJ statute. (*Bianka M., supra*, 199 Cal.Rptr.3d at p. 859, quoting H.R.Rep. No. 105-405, 1st Sess., p. 130 (1997) (hereafter Joint Explanatory Statement) ["The language has been modified in order to limit the beneficiaries of this provision to . . . abandoned, neglected, or abused children, by requiring the Attorney General to determine that neither the dependency order nor the administrative or judicial determination of the alien's best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect."].) However, "[w]hile both the conference report and the joint explanatory statement are printed in the same document, Congress votes only on the conference report." (*Roeder v. Islamic Republic of Iran* (D.C. Cir. 2003) 333 F.3d 228, 236 (*Roeder*).)[8] Therefore, "the explanatory remarks in the 'conference report' ***do not have the force of law***." (*Id.* at p. 237, emphasis added.)

Furthermore, even if the Joint Explanatory Statement once had the force of law, Congress has since amended the SIJ statute, repealing and replacing the text that the Joint Explanatory Statement had sought to explain. (William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 (Dec. 23, 2008) 122

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[8] "Some words about conference reports are in order. After the House and the Senate pass different versions of legislation, each body appoints conferees to resolve disagreements between the House and Senate bills. If a majority of the conferees from each body agree, they submit two documents to their respective houses: a conference report presenting the formal legislative language and a joint explanatory statement that explains the legislative language and how the differences between the bills were resolved." (*Roeder, supra*, 333 F.3d at p. 236.)

Stat. 5044, 5079 [amending clause (iii) "by striking 'the Attorney General expressly consents to the dependency order serving as a precondition to the grant of [SIJ] status;' and inserting 'the Secretary of Homeland Security consents to the grant of [SIJ] status'"].) Hence, if there had been any ambiguity as to whether Congress had directed the federal government, through the above-cited Joint Explanatory Statement, to determine whether state dependency or custody orders were "bona fide," that ambiguity has been squelched. Since the statutory hook on which a "bona fide" requirement might have been hung has since been repealed, this Court should give no deference to explanatory remarks that imply such a requirement's existence.

Moreover, since the Court of Appeal handed down *Bianka M.*, USCIS itself has publicly taken the position that "***there may be some immigration motive for seeking the juvenile court order***." (USCIS Policy Manual, vol. 6, pt. J, ch. 2, § (D)(5), emphasis added.) This aspect of USCIS's interpretation of the SIJ statute is "entitled to respect" for at least two reasons. (See *Christensen v. Harris County* (2000) 529 U.S. 576, 587 ["Interpretations such as those in . . . agency manuals . . . are 'entitled to respect' . . . [citation] . . . to the extent that those interpretations have the 'power to persuade.' [Citation.]"].)

First, and as already noted, even if the Joint Explanatory Statement had once carried the force of law, Congress has since repealed and replaced the text those remarks sought to explain. So USCIS is not ***bound*** by the suggestion that the state court proceedings must have been initiated "primarily . . . for the purpose of obtaining relief from abuse or neglect." (See *Manhattan Gen. Equipment Co. v. Comr. of Internal Revenue* (1936) 297 U.S. 129, 134 ["A regulation which does not [carry into effect the will of Congress as expressed by the statute], but operates to create a rule out of harmony with the statute, is a mere nullity."]; contra H.R.Rep. No. 105-

405, 1st Sess., p. 130 (1997).) Nor should this Court defer to that part of the USCIS Policy Manual that *relies upon* the Joint Explanatory Statement. (Contra USCIS Policy Manual, vol. 6, pt. J, ch. 2, § (D)(5) ["USCIS must review the juvenile court order to conclude that the request for SIJ classification is bona fide, [i.e.,] . . . not primarily or solely to obtain an immigration benefit."], citing 8 U.S.C. § 1101(a)(27)(J)(iii) and H.R.Rep. No. 105-405, 1st Sess., p. 130 (1997).)

Second, USCIS has staked a position contrary to a proposed regulation that was considered but never adopted. In *Bianka M.*, the Court of Appeal noted that, in 2011, the Department of Homeland Security ("DHS," of which USCIS is a part) proposed a regulation that would have required USCIS to consider whether "'the State court order was sought primarily to obtain relief from abuse, neglect, abandonment, or a similar basis under State law and not primarily for the purpose of obtaining lawful immigration status.'" (199 Cal.Rptr.3d at p. 859–60, quoting Special Immigrant Juvenile Petitions, 76 Fed.Reg. 54978, 54985 (Sept. 6, 2011) [proposed 8 C.F.R. § 204.11(c)(1)(i)].) It is reasonable to infer that the proposed regulation's non-adoption has been due, at least in part, to DHS's consideration of public comments submitted in opposition to the proposed "bona fide" determination. (See The Immigrant Children Lawyers Network, Comment Letter on Proposed Rule regarding Special Immigrant Juvenile Petitions, at p. 5, fn. 2 (Nov. 7, 2011), https://www.regulations.gov/document?D=USCIS-2009-0004-0051 ["[A] legal presumption that a SIJ petition is bona fide if the petitioner meets the eligibility requirements as evidenced by the State court order and proof of age is appropriate."], citing William R. Yates, Associate Director for Operations, USCIS, *Memorandum #3—Field Guidance on Special Immigrant Juvenile Status Petitions*, at pp. 4–5 (May 27, 2004) [instructing that adjudicators "generally should not second-guess the [State] court's

ruling or question whether the court's order was properly issued"]; see also Angie Junck, ILRC, Comment Letter on Proposed Rule regarding Special Immigrant Juvenile Petitions, at p. 6 (Nov. 7, 2011) ["The proposed regulation disregards the purpose of all SIJS orders, which is to make SIJS findings for a future petition. Although the courts generally make these findings at some point in their proceedings, they would not do so in an SIJS predicate order unless they are specifically asked to do so for SIJS purposes."], https://www.regulations.gov/document?D=USCIS-2009-0004-0037.)

Nevertheless, were this Court to infer that Congress *did* intend for a "bona fide" determination to be made at some stage of the SIJ process (see *Roeder*, *supra*, 333 F.3d at p. 236 ["We do not say material in the joint explanatory statement is of no value in determining Congress' intent."]), any state court decision arrogating the authority to make that determination would be preempted. "Federal law makes clear that state court authority with respect to SIJ classification is limited to making the predicate findings based on determinations under state law." (Jud. Council Memo, *supra*, at p. 8, citing *Leslie H.*, *supra*, 224 Cal.App.4th at p. 351 ["State courts play no role in the final determination of SIJ [classification] or, ultimately, permanent residency or citizenship, which are federal questions."].) "There is nothing in the Immigration and Nationality Act [("INA")] that allows or directs juvenile courts to rely upon provisions of the INA or otherwise deviate from reliance upon state law and procedure in issuing state court orders." (USCIS Policy Manual, vol. 6, pt. J, ch. 1, § (A), fn. 1.) That is because, as the Court of Appeal has recognized, "[t]he task of weeding out bad faith applications falls to USCIS, which engages in a much broader inquiry than state courts." (*Eddie E.*, *supra*, 234 Cal.App.4th at p. 329.) The suggestion from the Court of Appeal to the contrary—i.e., that California's courts are responsible for ensuring the "bona fide" nature of

custody proceedings in the SIJ context[9]—would operate, in effect, as a state parallel to a federal "bona fide" determination. Such an outcome is field preempted. (See *Arizona*, *supra*, 132 S.Ct. at p. 2502 ["Field preemption reflects a congressional decision to foreclose any state regulation in the area, ***even if it is parallel to federal standards***." (Emphasis added.)].)

Several provisions of the USCIS Policy Manual bolster the conclusion that Congress occupied the field with respect to the adjudication of SIJ petitions. (See *Eddie E.*, *supra*, 234 Cal.App.4th at p. 326 ["[T]he federal government has exclusive jurisdiction with respect to . . . the final determination whether an alien child will be granted permanent status as an SIJ. [Citation.].]") To begin with, Congress has authorized a federal executive agency to exercise independent judgment in the adjudication of SIJ petitions (see 8 U.S.C. § 1101(a)(27)(J)(iii) ("the Secretary of Homeland Security consents to the grant of special immigrant juvenile

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[9] Even if state courts were required to make "bona fide" determinations, the Court of Appeal's suggestion here—that Bianka's custody proceedings were "specially constructed proceedings designed mainly for the purpose of issuing orders containing SIJ findings" (see *Bianka M.*, *supra*, 199 Cal.Rptr.3d at p. 860)—is without merit. In her petition to the Court of Appeal for a writ of mandate, Bianka advanced ***four*** reasons she had sought an order placing her in her mother's sole custody: (1) Bianka prefers her mother's custody (a preference the superior court is required to consider according to subdivision (a) of Family Code section 3042); (2) Bianka's alleged father is abusive and violent; (3) being placed in her mother's custody would help ensure continuity and stability in Bianka's care; and (4) Bianka has serious health needs requiring her mother to have the legal ability to make critical decisions on her behalf without having to rely on Bianka's alleged father. (See *id.*, *supra*, Petition for Writ of Mandate, at pp. 33–35.) Moreover, there is no requirement under state law that a petitioner must present a specific imminent need in order to request custody; rather, the court is guided by the best interests of the child in making determinations regarding custody.